

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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JUL 22 2015

SC Court of Appeals

H. H. Vonharten,)
)
Appellant,)
)
vs.)
)
South Carolina Department of)
Motor Vehicles,)
)
Respondent.)
_____)

Docket No.: 14-ALJ-21-0604-AP

NOTICE OF MOTION AND MOTION TO
RECONSIDER OR FOR REHEARING

TO: SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES:

PLEASE TAKE NOTICE that the Appellant, H. H. Vonharten, through his undersigned counsel, hereby moves before the South Carolina Administrative Law Court and the Honorable Deborah Brooks Durden, Administrative Law Judge for a reconsideration or rehearing of her Order filed in the above-referenced matter on June 9, 2015. This motion is respectfully made upon the ground that the Administrative Law Judge erred in affirming the Final Order and Decision of the South Carolina Office of Motor Vehicles Hearings (OMVH) where the OMVH erred in admitting into evidence and considering the fitness statement of Dr. Paul Mazzeo dated December 31, 2013, where this written statement: (1) was never authenticated and (2) is inadmissible hearsay.

I. NOT AUTHENTICATED

Before any document can be admitted into evidence it must be authenticated as a condition precedent to admissibility. Authentication of a document requires "evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901, SCRE. The statement by Dr. Mazzeo, whether it is considered a letter, an expert's report, or a medical

report, is not self-authenticating. See Rule 902, SCRE. Dr. Mazzeo did not testify that he wrote the statement, nor did anyone who witnessed Dr. Mazzeo's authorship testify. In short, Dr. Mazzeo's statement was simply placed into evidence without any testimony as to its authenticity.

II. HEARSAY

Additionally, Dr. Mazzeo's letter, even if it were authenticated, is hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Dr. Mazzeo's letter is clearly hearsay. It is a statement by Dr. Mazzeo, who did not testify, which was offered and received into evidence to prove the truth of the matter asserted, that is, to prove Dr. Mazzeo's opinion regarding Mr. Vonharten's condition. In admitting Dr. Mazzeo's letter into evidence, the OMVH concluded that an exception to the hearsay rule was applicable. In so doing, the OMVH confused the hearsay nature of the letter itself, with the fact that Dr. Mazzeo's opinion is based in part upon hearsay statements from other individuals. An expert witness, of course, may testify as to matters of hearsay for the purpose of showing what information he relied on in giving an opinion. *In Re Manigo*, 389 S.C. 96, 697 S.E.2d 629 (Ct. App. 2010). More specifically, statements made to a doctor for the purposes of medical diagnosis or treatment, if they are reasonably pertinent to the diagnosis or treatment, are an exception to the hearsay rule and are admissible. Rule 803(4), SCRE. Accordingly, while statements made to a doctor which are reasonably necessary in order for the doctor to diagnose or treat a patient constitute an exception to the hearsay rule, the fact remains that the doctor cannot simply write a letter or report and the report itself, containing the doctor's opinion, is not hearsay. The doctor still must take the stand and testify and be subject to cross examination.

In short, Dr. Mazzeo's report contained statements by Dr. Mazzeo as to his opinion and diagnosis, and these hearsay statements by Dr. Mazzeo, as opposed to the hearsay statements made to Dr. Mazzeo, are inadmissible hearsay and his letter should not have been admitted into evidence.

CONCLUSION

Dr. Mazzeo's letter or report was not authenticated and constitutes inadmissible hearsay. It is accordingly respectfully requested that the Administrated Law Court and the Honorable Deborah Brooks Durden, Administration Law Judge, reconsider and rehear her Order filed in the above referenced matter on June 9, 2015 and reverse, or reverse and remand, the Final Order and Decision of the OMVH.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By 

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Beaufort, South Carolina
June 16, 2015

CERTIFICATE OF SERVICE

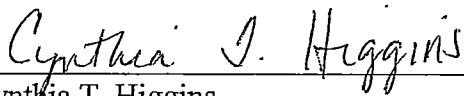
This is to certify that I have this date served a copy of the within and foregoing
**APPELLANT'S NOTICE OF MOTION AND MOTION TO RECONSIDER OR FOR
REHEARING** upon opposing counsel:

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Hearing Officer Brigette B. Autry
Office of Motor Vehicle Hearings
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Office of the General Counsel
South Carolina Department of Motor Vehicles
Post Office Box 1498
Blythewood, South Carolina 29016

by placing copies of the same in the United States Mail, properly addressed and with sufficient
postage affixed thereto as required by law.


Cynthia T. Higgins
Legal Assistant to James H. Moss

Beaufort, South Carolina

June 17, 2015

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LAW OFFICES

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SC Court of Appeals

July 20, 2015

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: H.H. Vonharten v. South Carolina Department of motor Vehicles
Appellate Case No.: 2015-001491

Dear Ms. Kitchings:

Enclosed for filing, in amendment of the original filing in the above referenced matter, is the following:

1. The Order of the Honorable Administrative Law Court Judge Deborah Brooks Durden, filed June 9, 2015;
2. The Notice of Motion and Motion to Reconsider or for Rehearing, filed on behalf of Appellant on June 16, 2015;
3. The Order Denying Appellant's Motion for Reconsideration or For Rehearing, filed by Judge Durden on July 7, 2015.
4. The Appellant's Notice of Appeal, originally file with the Court of Appeals July 14, 2015.

Please accept items 1-3 as an amendment and a cure to deficiencies in the Appellant's original Notice of Appeal, Item number four, above.

Thank you for your kind assistance.

Very truly yours,


James H. Moss, Esquire

MOSS, KUHN & FLEMING, P.A.

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To:

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